

## **Justice For The Orphans Whose Land Rights Were Violated By Family Members Or Other Grabbers**

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### **Abstract**

Over twenty years after the 1994 genocide against Tutsis in Rwanda; the country despite huge progress in her reconstruction journey, a number of property rights cases have been reported. This has prompted the government to reframe her laws governing the ownership and transfer of land. For cases that involved grabbing others' land, the government issued deadlines at which recorded property or land related scams should have been addressed.

To offer sustainable solutions to for property and land related issues, the country has innovated grassroot justice institutions known as "Abunzi" or mediators who handle cases of property or land related

issues not beyond five millions of worth. Despite these efforts invested in addressing the injustice over property and land related issues, there are still a number of cases whereby foster children or orphaned children have no right on their either their adoptive or biological prants' property or land because they have been either grabbed or the foster parent does not want to fulfill his social and legal protection obligations towards the fostered or orphaned child. In other cases, usurpation of property involves another person other than the child's family members.

In this paper, the author reviews various documents to indicate the gravity of the problem and the implications it has on the child's survival and legal protection as

reflected in a number of international conventions on children's protection of which the government of Rwanda is a signatory as well as the country's constitution.

Based on the gathered findings, a number of property and land related issues recorded to be leading to the family conflicts involve foster children. On top of this, some of the land and property grabbing cases are in the courts of laws. On the other hand, some foster children were denied information on their biological parents' property and lands. Therefore, the author provides recommendations on how property and land laws can incorporate the management, trustship, guardianship and transfer of foster and orphaned children's land and property rights of their late parents.

**Key word:** Property and land rights, foster children, orphan, violation, grabbers

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### **1.1. Introduction**

In Rwanda, land has been one of the most fundamental property to the family's livelihood and continuity. From long ago the country has registered a number of land

related cases of which some culminates in conflicts and in few instances death. More notably, land was indirectly instrumental in sowing animosity among Rwandans from since 1959 up to 1994 through the divisive history that culminated in the genocide against Tutsi. The period characterized by hatred and injustice have left the country indelible scars; among which land related issues that still affect children's pursuit for the enjoyment of equitable rights on their parents' lands and other properties.

Currently, despited the lack of exact number of children whose property and land rights are denied, Rwandan courts record a number of cases surrounding this issue. More of the children affected are those whose parents have lost lives while they were still too young. These one are being denied ownership rights on their families' property by adults who unscrupulously profit from their vulnerability. Without their land, many have no place to go, no means to support themselves, and no connection to their family legacy.

The research conducted by the Family for Every Child (2013) indicates that children lack adult who engage in seeking justice for their grabbed property or land lack

guardians to advocate on their behalf. In most cases, the study revealed that those who might plead on their behalf are their very guardians who have a stake in exploiting their land and property. Property disputes involving children rarely make it to court. Adults rarely take property disputes to court, and many Rwandans do not even know that it would be possible to seek legal recourse as has been identified by this research.

Despite this neglect of children's rights to land and property, the Convention on the Children's rights clearly indicates that States have an obligation to ensure that no child should face maltreatment, exploitation and denial of rights on the property and land of their parents and adopters.

## **1.2. Objectives**

The study revolved around the following objectives:

- a) To highlight property and land related cases affecting foster and orphaned children in Rwanda.
- b) To indicate legally accepted frameworks through which land and property law can change and

incorporate fostered and orphaned children.

## **2. Methodology**

This study was an explorative qualitative study that applied the documents review approach to gather information on property and land related issues that foster children in both families and placement institutions face. The study deeply analysed the gaps inherent in the country's land and property laws that deny foster children the rights over their parents property.

### **Sampling method**

As for the documents reviewed, they included newspapers articles that reported in land related issues, press releases, and the national laws regarding the land and property ownership, management, and transfer. The researcher also explored the legal practice as pertaining to the property and land rights for foster children elsewhere in the world to identify some of the best practices that can be borrowed by Rwanda.

### **Study population**

Children affected by land and property grabbing scams whether reported in courts of laws, to mediators or still pending with

the family circles as per reported in the National newspapers. The author further compared these information against the National land and property laws and further explored the situation in other places to retrieve the best practices and gaps in as much as the respect of foster children's rights over land and property are concerned.

### **Data analysis**

Thematic qualitative analysis was applied. Themes on issues of land and property law for foster children were identified by the national laws, reports from other countries and news items from National newspapers were analysed and clustered into themes. Information was read and reread to derive meaning and evidence of the most important concepts and relationships using some interpretative testimonies from the consulted documents and papers.

## **3. Key findings and discussion**

### **3.1. Fostering as the entry point for land and property grabbing**

In Rwanda, the issues of land grabbing has been emanated from some parents who receive a child without a parent. They do this for the purposes of taking advantage of

the land or any other valuable property left by its parent under the pretext that this child is under her/his protection as had been identified by one participant.

The survey conducted on the status of orphans in Rwanda with regard to land rights found out that a number of orphans are heading families and some of them are constrained by the fact that their land rights are neglected. The study unearthed that guardians do not always respect or recognize the orphans' land rights due to their personal interests over their parents' land rights. In their exploration, they found out that the existing customary, national laws and policies provide little support for orphans' land related rights (Laurel L. Rose, 2005). This leads orphans to experience many practical barriers, including the lack of information, time to claim their lands already grabbed by usurpers, few financial resources to administrative and legal forums while undertaking the defense of their land rights. These factors have led to considerable frustration for orphans who, as head of households, are struggling to satisfy their livelihoods.

When land issues come to the surface in the form of legal claims can generate strong

tensions and anxiety within communities. In Rwanda, the exact number land disputes throughout the country involving orphaned children are not known. Nevertheless, a survey conducted by the task force set by the government to detect them reported 60 cases in Bugesera district of the Eastern province of Rwanda only. It means that orphans whose lands have been grabbed and who need justice are many; hence some long term measures should be taken to guarantee no such cases emerge.

As reported by The New Times, No: 3020 issued on April 3<sup>rd</sup> 2013, the task force discovered that the majority of these cases have roots from relatives and tutors of the orphans who grabbed and sold their lands when these children under their guardianship were still minors and other cases involve the people who bought these controversial lands from the grabbers and who already secured the title deeds for the lands. Other problems detected are linked to public utilities, where land was used for structures such as schools, hospitals, and mostly the communal village settlements, without orphans' awareness or even compensation.

### **3.2. Children whose land and property rights have been denied face a number of problems**

For the moment, orphans whose lands or other properties have been usurped face serious problems in asserting their rights; particularly when confronted with land-grabbing by relatives and neighbors. Most cases involve orphans' family members, particularly those who should be their guardians and defendants of their rights, but who shamelessly take over their agricultural land and occupy their houses.

In as much as land and property grabbing is concerned in Rwanda, the majority of orphans whose lands were grabbed were children during and just after the genocide against Tutsi. On top of that some of them survived all alone. Besides, even where they live in the families fostering them still face up to the issue of not either know that they belonged somewhere or have the right to the land of their late parents. Yet, families that adopted them do not want to tell them the truth about their origin due to their personal interests. It is not only the families or the guardians of these orphaned children involved in the scam but also some officials are cited in these cases of land disputes involving genocide orphans. The latter

interfere with the genuine verdict in favor of these children; whence the country still registers a high number of land and property grabbing cases lingering in the courts.

Various land disputes involving orphans stem from the gap existing in Rwanda's customary laws and policies that give less attention to the protection of the orphans' land rights and other properties. Laws governing inheritance and how orphans can be guaranteed their late parents' lands and property in case of death are there in the books but the public do not know them or ignore them for their motives. Thus, a number of orphans are succumbing to surrendering their land rights due to the lack of information and the gap inherent in the National customary and national laws on how the later can access their lands or properties once faced with grabbing.

Twenty one years after the genocide against Tutsi, Rwanda has rebuilt her judiciary and legal frameworks. The country has ratified many national laws and policies in order to accommodate the international treaties and conventions of human rights and children's rights. It is in the same framework that The National Commission for Children was recently been established to protect

children's rights and interests; including their social and legal protection over property and land of their parents.

A number young boys and girls whose lands have been grabbed were still at a tender age and for the moment they are striving to obtain justice over their parents' land rights amidst challenges emanating from the fact that potential or actual usurpations may be their relatives, neighbors or strangers who may even threaten their lives. Thus, it should be important if the commission supports them in this legal struggle without interfering with the autonomous judicial institutions. Here the focus should be put on the social protection aspect of children's property and inheritance rights, that is, inserting in the country's legal system, the responsibility of every society to ensure children's property and inheritance rights in order that they can satisfy their primary and security needs such as food, shelter, and bedding, access to health and educational services, psychosocial support, and income generating activities for their livelihoods. To achieve these social determinants of health for the orphaned children whom lands have been grabbed, their violated rights have to be restored.

### **3.3. Seeking justice to orphans' violated land rights**

Children's property and inheritance rights are the fundamental building block of a social protection framework. These rights are essential for children to be assured the means to achieve a livelihood and a sustained growth. When children achieve a livelihood, their food security is enhanced, and when their food security is enhanced, their vulnerability is reduced; hence they contribute significantly towards the sustainable development for their countries. Ultimately, children who retain property and inheritance rights are well positioned to realize various economic, psychosocial, legal and human rights, such as shelter, adequate nutrition, and access to health services and a formal education.

Despite the legal protection for children guaranteed within Rwanda's laws, the reality is that many guardians do not respect orphans' land rights and very few orphans have sufficient access to administrative and legal forums to assert and defend these rights.

Rwanda has started the self reliance journey in which all her institutions must conform to

the rule of law, accountability, patriotism as well as fighting injustice and corruption. However, the country registers a number of land controversies of which orphans, mainly those of the 1994 genocide are involved in and which have stagnated. This slow progress in seeking justice for these children has roots in family members, guardians, neighbors and the grassroots institutions, people who bought land from the grabbers and who have land titles paralyze the these children's getting fair verdicts. But, in a bid to render justice to victimized orphaned children, legal institutions should own this problem and prioritize it in their immediate activities. For the time while ruling such cases, they should revisit the laws governing land distribution and then condemn those involved in selling or grabbing the litigious lands and where necessary oblige the buyers of such lands to repay the money given to them scrupulously.

As has been stated by the Rwandan deputy ombudsman after unearthing the land related disputes involving orphaned genocide children, the aim is to resolve these issues within the limited time, and to refer the rest to local authorities for mediation, except where the parties wish for litigation.

Considering the current state of the things, rather than referring orphans land related cases to the grassroots due to the fact that they are not entitled the jurisdiction capacities to solve such cases. In addition to this, in the normal circumstances, we know how long it takes to implement the verdict of the courts under the normal circumstance; hence we should devise other ways of approaching these cases that are beyond the capacities of the family councils and the mediators.

One cannot ignore the role played by the state instituted *abunzi* committees in addressing land related issues and in reconciling parties torn by land conflicts. However, there are some shortcomings in their verdicts. For example, it has been observed that orphaned children hardly accept and abide by their rulings due to the fact that certain community level arbitrators tend to position themselves as judges rather than mediators, even though they lack essential knowledge and skills to properly conduct adversarial hearings.

These sentiments find expression in a high level of appeals by disputants from one community level institution to another. As a

result, disputes frequently drag on over extended periods of time and may pass through the pre jurisdictional and judicial hierarchy several times without leading to a durable solution to the problem; seeing that the current law determining the Organization, Functioning and Jurisdiction of Courts land disputes with a value of less than RWF 3 million must be submitted to the Primary Court; whereas cases with a value exceeding that amount are dealt with by the Intermediate Court. Nevertheless, the Law No. 22/99 that governs inheritance rights and stipulates that children have the right to inherit their parents' property equally and without regard to gender. If the land cannot be partitioned because it would violate the 1 hectare minimal holding requirement under the Organic Land Law, an heir can be compensated with the monetary value of the land share. Yet, the law does not clearly show some provisions for such equitable share of land resources in case the parents pass away without having declared their inheritance wishes (GOR Law 22/99 1999; Organic Land Law 2005; GOR 2007).

It is obvious that children are hardly positioned to use either customary law or statutory law to their advantage because of



barriers which they commonly encounter, namely lack of information on some of their rights, time (they are unable to pursue their property claims before their deceased parents' property is permanently alienated), status (they are of lower status and power than their competitors—often their own guardians), youth (they are not permitted by law to pursue their property claims on their own), and cost (they are unable to meet the logistical and legal costs of pursuing their property claims).

The research underlines the significance of expanding the concept of “guardianship” in incorporating the empowerment of courts to grant active legal capacity to minors on the basis of their mental maturity, their expressed need to be independent and their immediate interest in asserting land rights (Rose, 2005). In addition, the author argued that lawmakers should reconsider the requirement that orphans must obtain “consent” in order to be legally emancipated from their guardians and that they should consider new methods for extending “protection” to orphans, such as assigning advocates to orphans. As for me, I strongly support these views and add that there should be a legal commission to handle all land related litigations of land involving

orphans and other vulnerable children and even incorporate this in all children related policies. The same commission can make immediate follow up and solution of cases of orphaned genocide children or adults whose lands have been usurped when they were minors. Rather than relying on the guardians to represent their land rights, a special team of judicial commission should be dedicated to these cases so as to remove the conflict of interests that may arise.

#### **4. Conclusion, recommendations and further studies**

##### **4.1. Conclusion**

Throughout various legal documents explaining violations of children's laws and rights, exploitation was only defined as all forms of slavery or practices similar to slavery, including debt bondage or forced marriage, sexual exploitation, servitude, forced labor or services and the removal of body parts (Stark, 2005; Nitze, 2013). Cases of property and land grabbing from foster children whether living in families or in placement institutions have not been discussed. Eventually, children's property rights are actually their future rights. Unlike adults, children do not ordinarily have the

mental maturity or the physical strength to resist usurpations. Children also do not have the same access to administrative or legal mechanisms that might redress violations of their property rights because customary practice and statutory law that compels them to make their claims to property, land and inheritance through adult guardians; yet these children urgently need access to their family property in order to support themselves.

#### **4.2. Recommendations**

As a matter of fact, in this article we find it very capital to place the children's property and inheritance rights on the government's development agenda that seeks to end the land and property disputes registered throughout the country. It is well known that orphaned children mainly by the genocide perpetrated against Tutsi who are denied their property and inheritance rights will not likely be able to realize other rights, including the material sustenance and psychological well-being.

To ensure that the rights of children over the lands of their parents are not violated, there is the need to develop new and innovative means for protecting children's property and

inheritance rights, such recording children in their parents' land registries, setting up the children's courts, or courts that focus on children's property rights, and introducing the advocates/mentors that have a mandate to protect and defend children's land and property rights. Along with the creation of these institutions, the government should formalize children's property and inheritance rights by recognizing the property and inheritance rights of orphans and other vulnerable children.

Besides, the government has to encourage local leaders to protect children's rights, including property and inheritance rights and to intervene in case children's rights are threatened. Last not least, family councils and land commissions should be encouraged to include orphaned children in discussions about the distribution of family land and property in order that children's rights are met while allocating land to the people. Lastly, property and land laws in Rwanda should be reviewed to incorporate articles that defend foster children's rights when they are fostered in families and any other third party.

### 4.3. Suggestions for further research

With the current gender based violence that lead to the death of one parent and the imprisonment of the other and which may obviously lead to the child's being foster in family or in placement institutions, there is a need to study the effects of such family breakup implications on the child's social and legal protection in terms of property and land related issues.

There is a need to extensively collect information on the number of property and land related cases recorded in the courts of law, their nature, the time they have been lodged in the courts of law and also the persons behind denying foster and orphaned children's property rights.

Other researchers should also explore on the successes and challenges of the deinstitutionalized process in terms of property and land rights of foster children and orphans.

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